Filed April 27, 1893.

In the Supreme Court of the United States.

October Term, 1892.

The Tide Water Oil Company, Appellant, v. The United States.	No. 149.

APPEAL FROM THE SOUTH DAKOTA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE TIDE WATER OIL COMPANY, Appellant, v. THE UNITED STATES. } No. 149.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

Concerning the statement of facts in the appellant's brief, it must be noted that section 25 of the act of October 1, 1890 (26 Stat., 567, appellant's brief, p. 9), does not help his contention. That section, like section 3019 of the Revised Statutes, refers to imported *materials*, and only enlarges the claimant's rights by allowing him to claim on articles partly manufactured of domestic materials, and not, as was required before, wholly of imported materials; and makes some further provisions in such case for the identification of the imported materials used, emphasizing the necessity of showing the fact of the manufacture or production of the completed articles in the United States.

The appellant can not properly base an argument on any inference from section 25 of the act of 1890, for the denial by this court of his motion for an additional finding of fact precludes him from showing exportation after October 1, 1890.

ARGUMENT.

THE QUESTION PRACTICALLY CONSIDERED.

The question presented in this case might well be regarded as one of fact, to wit: Where were the boxes or cases manufactured?

The finding of the Court of Claims is that they "were not manufactured in the United States." The qualifying words in the finding, "so far as it is a question of fact," are mere surplusage, if the place of manufacture is the material fact, and in our view it most assuredly is. But we are not inclined to insist upon this view of the case if the court can regard the findings as in the nature of a special verdict, presenting a question of mixed law and fact (*Barney* v. *Schmeider*, 9 Wall., 248), namely: Were the boxes or cases, which were manufactured in the manner set forth in Findings III and IV, "articles wholly manufactured of materials imported" within the meaning of said section 3019 of the Revised Statutes? Our brief shall therefore be mainly confined to this question.

Obviously this section of the statute means that the article exported must be manufactured wholly of imported materials, and that it must be manufactured in the United States.

THE CONTENTIONS.

1. The contention of appellant is that the nailing together of six shooks into the form of a box, and trimming the shooks when their dimensions exceed the proper lengths or widths in its factory at Bayonne, in New Jersey, constitute the manufacture of a box, and that until the shooks are so trimmed and nailed together they are merely "materials" within the meaning of the section.

2. Our contention is that the nailing together in the United States of six shooks which were manufactured in Canada, for the express purpose of being made into a box, does not constitute the manufacture of a box in the United States, even though some trimming of the shooks is done in the United States, when their dimensions exceed the proper lengths or widths.

Here we may call attention to the labor expended in trimming the shooks, although we do not regard this feature of the case as material. We merely desire to show that trimming was only occasionally required.

Finding IV says:

> The shooks so manufactured in Canada, and imported into the United States, were, at the claimants' factory in Bayonne ,N. J., constructed into boxes or cases * * * by nailing the same together * * * and by trimming when defective in length or width to make the boxes or cases without projecting parts. * * * The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for

use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer.

It is a fair inference from this finding that as the Canadian manufacturer was chargeable with the expense of trimming the shooks into proper lengths and widths; as such defects could only be the result of carelessness on the part of his workmen; and as he would naturally desire to satisfy his customers, therefore, as the charge was only "sometimes" made, trimming was only sometimes necessary, and hence the words "when" and "sometimes" indicate an exception and not the rule.

In the light of these facts it does not seem possible, we think, to escape the conclusion of the court below in its ultimate finding that "*the boxes or cases so exported were not manufactured in the United States,*" even though trimming was generally or always necessary.

Take for illustration a common chair, which is a more complex article of manufacture than an ordinary packing box. Its different parts must be manufactured before they are put together. Would any chair maker say that the nailing or fastening together of these parts constituted the manufacture of a chair? Would he not insist that his wages must not be limited to the work of nailing the parts together, and that the hand work he has expended in making the different parts must also be paid for as proper items in his wages for making a *chair?* Is it not clear that hand work or machine work and manufacture are equivalent terms, and that when the parts of a chair are made by hand or machinery those parts are manu-

factured articles as much as the chair itself is a manufactured article? Similarly, when the different parts of a common packing box have been manufactured out of boards by hand labor, and those parts are ready for nailing together in the shape of a box, the article is so nearly a finished manufacture that it becomes easy to draw a distinction between the boards purchased in their rough state by the mechanic and the article which he has made out of them. If in such case we ask the mechanic to distinguish between the materials he has used and the article he has manufactured, he will point to the pile of boards in his shop and some nails and say: "There are the materials and this box is the result of my hand work." Or, if the box is not nailed together: "The boards are the materials out of which I have manufactured the parts of the box. I consider that when I have sawed the boards into proper lengths, planed and trimmed them, I have almost finished the manufacture of a packing box."

We do not undertake to follow the learned counsel for appellant into the superfine distinctions which he attempts to draw between the word "materials" and the word "articles" in section 3019; nor to determine the physical or metaphysical question as to the exact moment when the morphological development of the six shooks into a box takes place. So far as we are able to comprehend his argument, it seems to lead to the conclusion that a box can be made without its parts, and that when the last nail is driven into it, the shooks of which it is composed perish, and a box comes into being.

If we may be permitted to draw an analogy from the "doctrine of dissolution" of a modern philosopher, who

says that there is a fundamental antagonism between dissolution and evolution in that "one is an integration of motion and a disintegration of matter" and "the other an integration of matter and a disintegration of motion," we shall proceed to disintegrate a packing box composed of six shooks and the proper complement of nails by drawing out the latter in order to determine whether the shooks or the box or both are manufactured articles or whether the former are merely materials. The nails are drawn and the dissolution of the box is accomplished. The mechanical "motion" which made it has unmade it. Have we by this process manufactured six shooks? If not, and if shooks are manufactured articles quite as much as the box into which they are formed, how can we regard the manufacture of a box as something entirely distinct from the manufacture of the shooks and nails of which it was composed?

The statutes make no such fine distinction. They classify "casks and barrels, empty, sugar-box shooks, and packing boxes and packing-box shooks of wood" as manufactured articles (22 Stat., 502; 26 Stat., 583), which obviously they are without such classification. When such shooks are exported in the form of packing boxes, they remain shooks in our customs laws; hence if duty has been paid on them and no drawback has been allowed, they may be reimported under the free list as boxes; otherwise they are dutiable as shooks to the same extent as and to no greater extent than if the boxes of which they are composed are reimported.

The boxes, of course, are "articles." That is a comprehensive term (*Junge* v. *Hedden*, 146 U. S., 233), but it is here restricted to articles "wholly manufactured of imported materials," and the inquiry is, are such articles wholly manufactured in the United States? There can be no valid contention that the words "in the United States" are not necessarily understood in the statute after the words "wholly manufactured," for the claimant argues that the articles were manufactured in the sense of the statute, that is, were wholly manufactured of imported materials, which must be in the United States or there is no force in the word "imported." And there is a distinction between the proper view of the word "articles" in *Junge* v. *Hedden* and here, which still further clears and limits the question. That case held that the word "articles," as used in tariff acts, could not be restricted to articles put in condition for final use, but embraced as well things manufactured only in part, or not at all. It suggests the distinction that while "articles" in tariff provisions (22 Stat., 491, 514, 517, "articles the growth, produce, and manufacture of the United States") necessarily includes raw materials—"materials," in short (for this is the force of the words "growth" and "produce")—as well as manufactures, in the special provisions for drawback under section 3019 "articles" is contrasted with "materials" (particularly because of the use of the words "wholly manufactured"), so that "materials" points out "articles" which are "growth or produce" rather than manufacture. These

words include raw materials like grain, wool, ore, and such further crude forms as pig metal, and lumber in the rough or dressed.

The point where such materials cease to be produce or productions and become manufactures is hard to define in a speculative way, but should not be so practically. This leads us back to the real question in the case, namely, whether imported shooks are materials as that word is used in the statute, and whether boxes made of imported shooks are wholly manufactured in the United States. The box is a manufactured article, and the manufacture was completed when the parts were finally nailed together. Did its manufacture begin with the process of separating the bundles of ends, bottoms, sides, and tops of shooks and nailing them together, or did it begin when the shooks were made in Canada out of lumber sawn into boards and planed, and was the making of the shooks consequently part of the manufacture of the box? Strictly, the manufacture of the box began when the tree was cut, and continued through all the processes up to completion. But, while we may consider that dressed lumber has not been worked up to such a stage of manufacture as to cease to be a material, how can the importer fairly contend that an essential part of the process beyond that stage, such as the fabrication of the shooks, did not advance the resulting articles beyond the stage of materials in the same sense? If so, why stop there? Shooks (the parts rather than the materials out of which a box is made) and boxes are associated in tariff provisions in a closely related way as manufactures. If it were for any reason advantageous to import boxes, com-

pleted except for fastening the tops, as materials for some further stage of evolution or metamorphosis, could they be brought in as materials, and if they could not, why may shooks?

The stage at which growth and produce does not fairly embrace manufactured or partially manufactured articles as material, properly stops short of such a point in transformation as a shook. It may be difficult to define the limit, but a line must be drawn, and to draw it at the last stage of well recognized practical inclusion in "materials," such as dressed lumber, is sound. Suppose it were more advantageous to import lumber in the rough as logs, or as lumber merely hewn and sawn, and make shooks here and export in that form for completion abroad, such shooks would undoubtedly be articles on which drawback could be claimed. They would not be materials. Because the fact is otherwise, that is, because it is advantageous to import shooks and export boxes, can it fairly be claimed that shooks are materials? They are clearly manufactured. Are they also materials of manufacture, or of some further stage in the line of evolutionary manufacture? Does *this* law, in other words, recognize "manufactured materials?" Lumber, it is true, in a general sense, is manufactured, but in the practical distinctions observed it is *produced* rather than *manufactured*.

While it may be admitted that tariff laws have not uniformly preserved the distinction between materials and manufacture, so that it sometimes appears as if manufactures were the materials of a further stage of development, such confusion, so far as it exists, appears in acts which impose duties (e. g., tariff act of 1883, Revised

Statutes, section 2504, page 463, "burlaps and like *manufactures;*" *ibid.*, "gunny cloth, * * * or other *materials;*" but, again, the same rate of duty is applicable to *manufactured* steel and articles of steel *partly manufactured*, page 465; also as to "*anchors* or *parts* thereof," page 466). And we may admit that "ready-made clothing of whatever *material* composed" refers to silk, wool, and linen *cloths* or *fabrics*, though such cloths and fabrics are also classed as manufactures. (Revised Statutes, section 2504, "brown and bleached linens or other manufactures," page 462; "dress and piece silks," page 469; "woolen cloths," page 471.) But it may be pointed out that when a product used in further manufacture is called a material the term is often equivalent to "substance," which is not strictly the same as materials. "Card cases of whatever material composed" (22 Stats., 511) would point out leather, *inter alia*, as a generic *substance*. In this case "wood" or "lumber" would be a parallel, but not "shooks." So in the same act, page 498, articles "wholly or partly manufactured from sheet iron, or of which sheet iron shall be the material of chief value," indicates the generic substance, sheet iron—sheet iron in the mass, out of which the articles are fabricated. So wood or lumber are materials, the *substance* out of which articles are made. "Shooks" are not "material" or "materials" in that sense. They are separate and individuated things. We speak of "lumber" broadly, generically; "a pile of lumber." We speak of a "set of shooks."

Granting, however, for the sake of argument, that tariff provisions as to materials and manufactures can

properly throw light upon the meaning of the language of section 3019, it immediately appears, on the other hand, that Congress has always looked upon shooks and boxes as substantially the same thing by their familiar association for dutiable purposes and in free-entry provisions; when they are imported they are subject to the same rate of duty in the same paragraphs, and when manufactured in the United States and exported they are entitled upon reimportation to free entry in their final form as boxes. (22 Stat., sec. 2502, pp. 502, 517, 518; 26 Stat., par. 228, p. 583, par. 493, p. 603.) The language of the provisions relating to free entry is "casks, barrels * * * and other vessels of American manufacture, * * * including shooks when returned as barrels or boxes." Congress has, therefore, regarded the step from a "set of shooks" to a box as a slight one, and has clearly indicated that "shooks" are not to be regarded as materials out of which articles are to be manufactured to encourage domestic manufactures and upon export to be entitled to drawback, but as manufactured articles themselves, coming into competition with domestic products, upon which, therefore, a correspondingly high rate of duty is laid.

We may well rest the question as to the purpose and policy of the law under section 3019 upon the reasoning of the learned court below, and without investigating at length the science of political economy, tariff history, and legislation, and the distinction between "bounties" and "drawbacks," we may be satisfied that while one object

of the statute was to promote our export trade, that object was certainly not to be secured at the expense and sacrifice of domestic manufactures. The main scheme and policy of our tariff laws would be ignored if we held that the only or chief purpose was to encourage export trade, and the court therefore rightly concludes that the controlling purpose of the statute was to foster domestic manufactures, at the same time permitting those engaged in domestic manufacturing to obtain a drawback on such imported materials subject to duty as they could advantageously use.

Considering now some of the cases in which this court has passed upon questions as to "materials" and "manufactures," the Case of *Worthington* v. *Robbins* (139 U. S., 337) held that white enamel used for various purposes, and requiring new processes of manufacture before it could be adapted to any particular practical use, was subject to duty as an "article manufactured in whole or in part" and not to a higher rate as "watch materials," although it was imported for use in making watch dials; and that in order to be dutiable under the latter term the article as imported must be in such form as to show adaptation to making watches. This case illustrates the shifting use of the terms "materials" and "manufactures" or "articles manufactured." Inasmuch as the materials in the case now before the court did not require new processes of manufacture in any real sense, and were in a form showing their adaptation to the making of boxes, and their utility was strictly limited to that purpose (for which they were prepared), any argument drawn from

that case fails of effect. The distinction indicated by the case helps us.

In *Hartranft* v. *Wiegmann* (121 U. S., 609), shells, cleaned, ground, and etched, were held not to be manufactures of shells, but the court said that they were still shells and had not been manufactured into a new and different article having a distinctive name, character, or use from that of a shell.

Here, in order to constitute that case an authority, it would have to appear that the original boards, although having labor applied, had been merely treated in some similar or equivalent way as the shells in the former case; but as a matter of fact they were manufactured into a new and different article, having a distinctive name, character, and use. In *Saltonstall* v. *Wiebusch* (156 U. S., 601) the court held that certain articles made of forged steel were to be classified as "manufactures of metals" rather than as "forgings of iron or steel," for the reason that the articles in question received further treatment before they were complete, and therefore did not properly belong in a separate enumeration of the tariff act of 1883 for forgings of iron or steel. The provisions as to forgings recognized a stage of manufacture, and the court by its language, page 603, indicated as to "forgings" a division into those incomplete, in process of manufacture, and those finished and ready for use, from which the inference is plainly to be drawn that either at the complete or final stage they are manufactured articles. And the court, while stating that a small amount of labor is not decisive of a question of classification so as to stop

"forgings" short of "manufactures," gave as the reason the possible object of Congress to protect the additional labor. This argument can not be advanced here, for the very reverse is the case. Congress doubtless did intend to protect the additional labor involved in making shooks as well as boxes in this country, which was defeated by making the shooks in Canada and merely nailing them together into boxes in this country.

But it may be asked with reference to the claim that the last stage of the *materials* is "lumber" or "dressed lumber"—why should we hold that materials in the sense of the statute stop short at dressed lumber and do not include shooks? Why should shooks be manufactures of lumber or manufactured lumber rather than materials? And the answer is that this is the obvious distinction and the natural place to draw the line. In the development of tariff provisions there is a recognition of successive distinctions between lumber in the rough, dressed lumber, and manufactures of wood—(to indicate merely the outline of the classification). The wood schedule of the act of 1883 (22 Stat., 501, 502) provides for timber in two paragraphs; for sawed boards and planed lumber in another; and for lumber planed, tongued, and grooved in the following paragraph; then for still more reduced forms, as laths, shingles, etc., imposes higher rates, as well as for manufactures of wood not specially provided for. The act of 1890 (26 Stat., 582) preserves substantially this classification, and in enlarging the free list on wood provides for certain woods not further manufactured than "cut into blocks

suitable for articles into which they are to be converted," and than "cut into suitable lengths for manufactures into which they are intended to be converted" (p. 611).

The act of 1894 further extended the free list in respect to wood and manufactures of wood, but similarly recognized dressed lumber, manufactures of wood, and various successive changes in its manufacture. (28 Stat., 521, 545, 546.) The provisions of the latter act were reviewed in the case of the *United States* v. *Dudley*, in which the Government sought to tax certain boards or planks of specified length, breadth, and thickness, and notched, tongued, or grooved, under paragraph 181 of the act of 1894 (28 Stat., 509) as "manufactures of wood not specially provided for," or under section 3 of said act as "articles manufactured in whole or in part not specially provided for in this act." The circuit court (74 Federal Reporter, 548) held that the duty should be assessed under paragraph 676 of said act as "lumber dressed," for which the importers contended, and this decision was affirmed in the circuit court of appeals. (45 U. S. Appeals, 654.) The case was affirmed without opinion by a divided court, and is confessedly a very close one; but is in our favor as authority on the proposition that while planks or boards, planed, grooved, and tongued, had not advanced beyond the condition of dressed lumber, manufactures of wood are articles of wood and completed into things different from the wood of which they were made. Certainly shooks fall under this definition as much as or more than laths or shingles.

In that case the Government argument was that the phrase "rough or dressed" does not include articles which after being dressed have undergone a further process of manufacture sufficient to endow them with a specific use and a separate designation, and shooks were mentioned as in substantially the same stage as the dressed lumber in that case (the inference from which is that there can be no doubt as to the case of shooks).

The decision in *United States* v. *Quimby*, 4 Wall., 408, is applicable to the present case. There the following article was held to be within the general provision of the Morrill tariff of March 2, 1861, concerning all articles manufactured wholly or in part, not otherwise provided for:

"616 cords of split white-ash timber, chiefly designed to be used in the manufacture of long shovel handles."

The decision was based upon that rendered at the same time in *United States* v. *Hathaway*, 4 Wall., 404, which related to "a quantity of white-ash timber split in the form of pipe and hogshead staves at the place of importation." Mr. Justice Nelson said (p. 408):

"If it has undergone the process of manufacture, even in part, it is taken out of the free list.

"In the present case the article is prepared by splitting for the hand of the cooper, in the manufacture of the pipe or hogshead, a process which has the effect to relieve him from much of the labor that would otherwise be required in adapting it to the use intended. It has already been reduced to the proper form and size—a work which in the first stages of the manufacture of the hogs-

head must be done, and by which a considerable advance is made in fitting and finishing it for the market."

So in the present case, the articles in question have been reduced to the proper form and size, so that they may be used by the carpenter without further labor in fitting or finishing.

The principle of this case is applied to other schedules also of the tariff act. The definition given in *Erhardt* v. *Hahn* (14 U. S. App., 117, 120) is:

"Where an article has been advanced through one or more processes into a completed commercial article known and recognized in trade by a specific and distinctive name other than the name of the material, and is put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture."

While these cases arose under tariff provisions, they are strongly persuasive here, because shooks are obviously further advanced as manufactures than "split ash timber for shovel handles," "hogshead staves," and "planed, tongued and grooved timber."

Our contention from the cases above cited is, that "box shooks" are not "materials" within the meaning of section 3019 of the Revised Statutes, but on the contrary that they are "articles wholly manufactured" within the meaning of that section.

It has been repeatedly decided under the tariff acts that where an article has been advanced through one or more processes into a completed commercial article, known and recognized in trade by a specific and distinctive name other than the name of the material, and is

put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture. It is sufficient to refer to *Hartranft* v. *Wiegmann*, 121 U. S., 609; *Schriefer* v. *Wood*, 5 Blatchf., 215, and *Stockwell* v. *United States*, 3 Cliff., 284. (*Erhardt* v. *Hahn*, 14 U. S. App., 117, 120.)

APPELLANT'S BRIEF.

It is not necessary to consume the time of the court in reviewing at length the brief of the learned and industrious counsel for the appellant; nor to pursue the subject back through legislation and debates to the beginning of the science of political economy. The distinctions drawn are many and refined. It will be sufficient merely to indicate answers to some of the positions taken by the learned counsel.

He contends that drawbacks are not meant to protect domestic manufactures, but to promote foreign commerce. Let one of his own authorities (appellant's brief, p. 18), quoting Dr. Smith, answer him: "Drawbacks do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been enforced * * * but [they] hinder the duty from driving away any part of * * * [the capital of the country] to other employments. They tend not to overturn that balance which naturally establishes itself * * *." In other words, the great economist thinks an equilibrium is preserved. He does not think the chief purpose is to promote foreign commerce.

The learned counsel urges drawback provisions as a contract. If the refund had not been promised, the goods

would not have come in at all, he says. But the promise was on conditions and terms, and the claimant must read and construe the contract correctly. Its terms are before him, and he can not claim to have been deceived or misled.

Again turning his own guns upon him, in attempting to show that the raw material of one manufacture is the finished product of another, he quotes remarks of Mr. Justice Baldwin, at the time a member of the House of Representatives, in reporting a tariff bill (p. 39, appellant's brief). But the quotation concludes: "I believe the safer rule is to consider that which is taken from the earth as the raw material, and every change in its form or value by labor as a manufacture." That is substantially the ground upon which we stand, except that we are willing to admit that the conditions of trade and manufacture developed since 1820 require that the primary stages by which raw and crude pass into manufactured should still remain in the class "materials." He argues that transformation from shooks to box is manufacture. It is part of manufacture—the last step. But grant it broadly, for argument's sake, the transformation from boards to shook, is also manufacture, and this practically takes shooks out of the class of materials and defeats the claim.

He substantially admits (p. 46 of his brief) that the manufacture contemplated by the statute must be in the United States, but contends that the word "wholly" qualifies "materials" rather than "manufactured"—that it refers to the things imported rather than the process

of manufacture. The juxtaposition of terms in the sentence forbids this, and we have answered it in other portions of this brief by the argument at large. He thinks that the Government seeks to draw a distinction between making and manufacturing. The Government is quite willing to agree that substantially and plainly they mean the same thing, but the boxes were not made here; they were not manufactured here. The imports—already manufactured articles—could not be exported without real labor and process of fashioning (not mere arrangement and connection of parts) being expended upon them, since the requisites were that they were to be manufactured of imported materials and were to be wholly manufactured into the ultimately desired articles in the United States.

As to the criticism upon the use of the phrase "not within the meaning of the act," as an official qualification evasive of plain right and duty—this is not a screen behind which the Government officers hide. It suggests the careful scrutiny into the meaning of language used so as to reach the legislative intent, and is to be regarded in construction by all whose duty it is to administer as well as to interpret the law. It is only necessary to add that decisions are very numerous in in which this qualification has been addressed and applied to many laws. Further, it is a well-known principle that departmental rulings must be uniform and long continued to constitute a rule of law of sufficient weight to be set against judicial interpretation of the meaning of a statute, and then only when the statute is doubtful. Such is not the case here. It is to be noted that the presumption as

to rates of duty is no longer in favor of the importer (*Hartranft* v. *Wiegmann*, 121 U. S., 609), but in favor of the collector, (*Arthur* v. *Unkart*, 96 U. S., 118; *Erhardt* v. *Schroeder*, 155 U. S., 124), and this change should weigh in favor of official construction and action in provisions, like this, related to the tariff.

Again, as to the cases of *United States* v. *Schoverling* (146 U. S., 76) and *Hedden* v. *Richard* (149 U. S., 346), and similar cases cited (p. 45, brief of appellant), they arose under and were controlled by the very different provisions of laws providing for duty, and in the last-mentioned case the court's opinion substantially was that a certain question of fact affecting commercial designation should have been submitted to the jury.

Finally, the learned counsel suggests that the Constitution forbids the laying of a tax upon exports, and charges that to refuse this claim would amount to a breach of that rule of the Constitution. To refuse a drawback is not to lay a tax upon exports. All that the customs officials and the court below have done is to refuse to allow refund of duty upon exportation of imported articles, upon the well-taken ground that under the law drawback was not allowable and the claimant not entitled. The case has nothing to do with a tax upon exports. Besides, according to his own contention, the only article exported was a box, and the taxed materials were consumed in its manufacture in the United States and not exported.

AN ANALOGY DRAWN FROM AN ABSTRACT VIEW.

Materials are always things, whether crude or advanced. Manufactures are always things, whether at a lower or higher stage. But the word "manufacture" also means a process; it is a verbal noun, so to speak, and suggests action and not result. So, when the act says "wholly manufactured of imported materials," we must especially keep in view the process of the production and not the product. The process is a continuing one, and (recognizing the practical necessity of not placing the true limits of "materials" back of "dressed lumber") began with the making of the shooks out of lumber. The product, the box, is a manufacture, but it was not manufactured in the United States.

Inasmuch as the distinctions affecting the term "materials" here are somewhat elusive and difficult to define, it may assist to express them if we refer again to and pursue the scientific analogy suggested in the first portion of this brief.

The process of manufacture may correctly be likened to the action of force in organic nature. Force, effecting its results through some form of motion, applies to the lower and lowest forms of inert matter, structural and functional development, until in the evolution the single cell is so multiplied and differentiated as to become a shell containing a living organism, whose function has been transformed from passivity, real or apparent, to activity. So manufacture seizes materials and transforms them into a product, a box, differing vastly from the mere aggre-

gate of woody cells in a tree, and having a distinct differentiated use. At what stage in the many stages of the evolution of nature does the growing structure cease to be mere matter and become an organism with defined uses? Surely very early in the history of the transformation. So, in our case, in what stage in the less numerous series of steps from tree to box did the growing result cease to be material and become for our purposes an article—a manufacture? Surely before the shook was completed and packed with others conveniently for shipping and passing over by the slight completing exertion of force into a box. Break down and disintegrate the shell and its tenant, you destroy its life. It is no longer useful as a trilobite. But we essentially carry its atoms no further back than the last stage which nature perfected and to which she brought it. We have not made or created that particular cell structure which had been reached before the living force was finally correlated and then destroyed; much less have we by such dissolution taken it down the series of changes to the ultimate matter, or taken it to any intermediate stage of matter or material. So, here venturing perhaps a strange but not untrue analogy, if we withdraw the nails have we made shooks? Have we reversed the process and so shown that shooks were, after all, materials? By strict consequence, if we merely nail the shooks together and occasionally trim them, where in infrequent cases the related Canadian enterprise did not do that work properly, we have not made a box.

To vary the language of an illustration of the court below, it is not sufficient to stitch the parts of a garment together in the United States, but, although perhaps the cloth need not be made here, it must be measured, cut to the fitting dimensions, pressed and sponged here, to entitle the exporter to the benefit of drawback on the completed coat. If manufacture is the transforming and fashioning of raw materials into a change of form for use (*Kidd* v. *Pearson*, 128 U. S., 1, 20), such construction of boxes in this country out of imported shooks, as is shown in this case, is not transformation of the materials, but only the completion of a transformation which began with the preparation of the materials.

As to the nails with which the boxes were made: The imported rods from which the nails were wholly manufactured in this country well illustrate the difference between raw materials or materials not yet advanced beyond such condition, and manufactures which have passed further on the way. The rods were clearly materials; the shooks were not. But the court below indicates the reasoning on which the nails are not fairly entitle to drawback. They were not the articles exported; they merely formed part of the boxes, and as such drawback upon them is not due. If the shooks had been exported in the original import packages and the nails as nails, both would have been entitled to drawback (the former under sections 3015, 3016, the latter under section 3019, Revised Statutes), but not when they constitute boxes by their final assemblage. It may be that if the exportation had occurred after October 1, 1890, the nails

would have been entitled to refund of the rod duties under section 25 of the act of that date, because the nails would "so appear" and could be so identified as to meet the requirements of that section. But this court, by their denial of the claimant's motion for an additional finding of fact in the case, have forbidden him to set up any claim under the act of 1890. The United States confidently submits that question to the court.

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

HENRY M. HOYT,
Assistant Attorney-General.
FELIX BRANNIGAN,
Assistant Attorney.